

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 08-827 JB

ALBERTICO GARCIA-RUIZ,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on: (i) Defendant's Motion to Withdraw as Counsel and for Appointment of New Counsel to Represent the Defendant, filed February 19, 2009 (Doc. 41); and (ii) Unopposed Motion to Dismiss Defendant's Counsel, filed February 24, 2009 (Doc. 43). The primary issue is whether the Court should allow Assistant Federal Public Defender Roger A. Finzel and the Office of the Federal Public Defender to withdraw as counsel for Defendant Albertico Garcia-Ruiz, and then appoint counsel from the panel of approved Criminal Justice Act attorneys to represent Garcia-Ruiz in this case. Because the motions are not opposed, and because there appears to be good grounds for the motions, the Court will grant the motions.

PROCEDURAL BACKGROUND

Garcia-Ruiz was first brought before the Court on a Complaint on February 7, 2008. Garcia-Ruiz waived grand-jury presentation so that he could be considered for the United States Attorney's fast-track policy. After due deliberation, the United States Attorney's Office informed Garcia-Ruiz and his counsel that Garcia-Ruiz would not be considered for the United States Attorney's fast-track policy. The United States then proceeded to an indictment, and Garcia-Ruiz was arraigned on May 2, 2008.

Apparently based in part on Mr. Finzel's inability to obtain a fast-track plea agreement from the United States Attorney's Office, Garcia-Ruiz on May 8, 2008, filed pro se a motion to dismiss Mr. Finzel. Mr. Finzel thereafter visited with Garcia-Ruiz, and reviewed his complaints and concerns, in an effort to resolve any impasse between the two. The Honorable C. LeRoy Hansen, Senior United States District Judge, held a hearing on June 3, 2008. Judge Hansen instructed Garcia-Ruiz and Mr. Finzel to renew and redouble their efforts to work together, and to resolve this case without the appointment of new counsel.

Since the hearing before Judge Hansen, Garcia-Ruiz and Mr. Finzel have been meeting regularly. Garcia-Ruiz has requested, counsel has filed, and the Court has granted numerous continuances while this process has continued in good faith by all concerned. Mr. Finzel has also continued to negotiate with counsel for the United States, Assistant United States Attorney Norman Cairns.

The United States has now offered Garcia-Ruiz a non-standard fast-track plea agreement. The United States has also agreed that Garcia-Ruiz should receive credit for all time served in state custody since a federal detainer was lodged against him on June 21, 2006. Nevertheless, Garcia-Ruiz has rejected this new plea agreement and requested that Mr. Finzel get off his case. At Garcia-Ruiz' request, Mr. Finzel now asks the Court to allow him to withdraw as counsel.

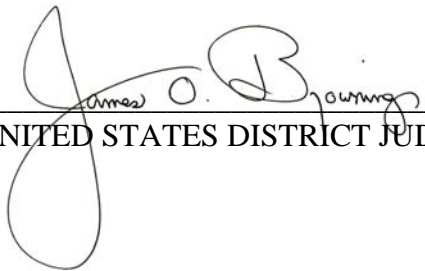
Garcia-Ruiz has also separately filed a motion requesting a new attorney. Garcia-Ruiz believes that Mr. Finzel is not keeping him informed about his case in a timely manner, is not making progress on his case, and is not listening to what he has to say. Garcia-Ruiz therefore asks the Court to appoint him new counsel. Mr. Cairns has informed the Court's Courtroom Deputy Clerk that the United States takes no position on these two motions.

ANALYSIS

Although these motions are unopposed, the Court has nonetheless carefully considered the issues here. The Court believes that Mr. Finzel's and Garcia-Ruiz' representations make it clear that there has been a breakdown in the attorney-client relationship, and that they have been unable to resolve that fundamental problem. Accordingly, the Court will grant both motions, allow Mr. Finzel to withdraw as counsel, and appoint Garcia-Ruiz new counsel from the panel of approved Criminal Justice Act attorneys.

Garcia-Ruiz has expressed dissatisfaction with Mr. Finzel's representation. Earlier in this case, Judge Hansen ordered Garcia-Ruiz and Mr. Finzel to work to resolve their differences. After the hearing before Judge Hansen, Mr. Finzel was apparently able to secure from the United States a non-standard fast-track plea offer and an agreement that Garcia-Ruiz' time in state custody after having a federal detainer lodged against him would be credited as time served. Mr. Finzel and Garcia-Ruiz have also been meeting regularly. Despite Mr. Finzel's securing offers from the United States, Garcia-Ruiz has turned the offers down and continues to insist on new counsel. Given that Mr. Finzel and Garcia-Ruiz have already diligently tried to resolve their differences and that both now agree that new counsel should be appointed because of the breakdown of the relationship, the Court will allow Mr. Finzel to withdraw and will appoint new counsel.

IT IS ORDERED that the Defendant's Motion to Withdraw as Counsel and for Appointment of New Counsel to Represent the Defendant, and the Unopposed Motion to Dismiss Defendant's Counsel, are granted. The Court will appoint Defendant Albertico Garcia-Ruiz new counsel from the panel of approved Criminal Justice Act attorneys.



UNITED STATES DISTRICT JUDGE

Counsel:

Gregory J. Fouratt
United States Attorney
Norman Cairns
Assistant United States Attorney
Albuquerque, New Mexico

Attorneys for the Plaintiff

Roger A. Finzel
Assistant Federal Public Defender
Albuquerque, New Mexico

Attorney for the Defendant